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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Herb Nelson, a married man,

Plaintiff,

vs.

Liberty Life Assurance Company of
Boston Group Long Term Disability
Insurance Policy No. GF3-850-289008-
01, an ERISA benefit plan; HD Supply,
Inc., a plan administrator,

Defendants.

Case No.:

**DEFENDANT'S NOTICE OF
REMOVAL**

Pursuant to 28 U.S.C. § 1331, 1441(a)-(c), and 1446 and Local Rule 3.7 of the Rules of Practice of the District Court for the District of Arizona, Defendant Liberty Life Assurance Company of Boston ("Defendant"), files this Notice of Removal for the following reasons:¹

1. A civil action has commenced and is now pending in the Superior Court of Arizona, Maricopa County, Case No. CV2012-016884, with the above caption.

¹ Defendant was incorrectly named as "Defendant Liberty Life Assurance Company of Boston Group Long Term Disability Insurance Policy No. GF3-850-289008-01" in the Complaint.

1 2. Copies of the Complaint, Summons, and Certificate of Compulsory
2 Arbitration were served on Liberty Life Assurance Company of Boston on February 6,
3 2013.

4 3. Copies of the Complaint, Summons, and Certificate of Compulsory
5 Arbitration were served on HD Supply, Inc. on February 14, 2013.

6 4. This is a civil action over which this Court has original jurisdiction
7 pursuant to 28 U.S.C. § 1331, and is removable to this Court pursuant to the provisions
8 of 28 U.S.C. §§ 1441 (a) - (c) on the grounds that the Court has original jurisdiction by
9 virtue of federal question jurisdiction.

10 5. Plaintiff is seeking to recover long term disability benefits under 29
11 U.S.C. § 1132(a)(1)(B) (along with other damages) from a disability benefits plan, in
12 which he was a participant by virtue of his employment with HD Supply, Inc. (“HD
13 Supply”)² The benefit plan at issue is an “employee welfare benefit plan” as that term
14 is defined in 29 U.S.C. § 1002(1) of the Employee Retirement Income Security Act
15 (“ERISA”).³ Defendant hereby submits that federal jurisdiction is proper based on the
16 grounds of federal question jurisdiction, 28 U.S.C. § 1331.

17 6. District courts have federal question jurisdiction of all civil actions
18 “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §
19 1331. A civil action arises under the laws of the United States if the state-law claim
20 raised in the civil action “necessarily raise[s] a stated federal issue, actually disputed
21 and substantial, which a federal forum may entertain without disturbing any
22 congressionally approved balance of federal and state judicial responsibilities.”⁴ This
23 action involves claims that relate to the laws of the United States, specifically, the

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25 ² See paragraphs 2, 3, 8, 17, 21 of Plaintiff’s Complaint, a copy of which is attached
hereto as part of composite Exh. “A”.

26 ³ See paragraphs 1, 2, 10-12, 14-15, 35-37, 41, 43, 46, 49, and 51 of Plaintiff’s
Complaint, a copy of which is attached hereto as part of composite Exh. “A”.

27 ⁴ *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545
28 U.S. 308, 125 S. Ct. 2363, 2368 (2005).

Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.* ERISA applies to any “employee benefit plan” if the plan is established or maintained by an employer or employee organization engaged in commerce or in any industry or activity affecting commerce. 29 U.S.C. § 1003. An “employee benefit plan” is defined as an employee welfare benefit plan or an employee pension benefit plan. 29 U.S.C. § 1002(3). A plan is a welfare benefit plan if it “was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, . . . benefits in the event of sickness, accident, disability, death or unemployment.” 29 U.S.C. § 1002(1) (references to other types of employer-provided benefits qualifying as ERISA plans omitted) (emphasis added).

7. Plaintiff’s claims necessarily raise stated federal issues, actually disputed and substantial, which this Court may entertain without disturbing any congressionally approved balance of state and federal responsibilities.

8. As noted above, Plaintiff is seeking to recover long term disability benefits (along with other damages) from a disability benefits plan, in which he was a participant by virtue of his employment with HD Supply.⁵ The benefit plan at issue is an “employee welfare benefit plan” as that term is defined in 29 U.S.C. § 1002(1) of the Employee Retirement Income Security Act (“ERISA”). The benefits sought by Plaintiff are sought from an ERISA plan. Therefore, the plan and an action for benefits under the plan are governed by ERISA, and Plaintiff references ERISA in the Petition.”⁶ The Court’s analysis of Plaintiff’s causes of action will necessarily require interpretation of this ERISA plan. Because the preemptive force of ERISA is so powerful that it completely displaces any state law cause of action, Plaintiff’s causes of action will be “recharacterized” as a federal claim under ERISA. Plaintiff’s causes of

⁵ See paragraphs 2, 3, 8, 17, and 21 of Plaintiff’s Complaint, a copy of which is attached hereto as part of composite Exh. “A”.

⁶ See paragraphs 1, 2, 10-12, 14-15, 35-37, 41, 43, 46, 49, and 51 of Plaintiff’s Complaint, a copy of which is attached hereto as part of composite Exh. “A”.

1 action in the State Action are completely preempted by 29 U.S.C. § 1132(a)(1)(B)
 2 and/or § 1132(a)(3). *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985);
 3 *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987); *Metropolitan Life Ins. Co. v. Taylor*,
 4 481 U.S. 58 (1987). Accordingly, removal to this Court is proper pursuant to 28 U.S.C.
 5 § 1441(a) as it is under the original jurisdiction of the Court pursuant to 28 U.S.C. §
 6 1331 and 29 U.S.C. § 1132(e).

7 9. Pursuant to Local Rule 3.7, the documents listed below are attached as
 8 Exhibit A.

9	Date	Description
10	11/2/2012	Complaint
11		Certificate of Compulsory Arbitration
12	2/2/2013	Notice of Intent to Dismiss for Lack of Service
13	2/6/2013	Affidavit of Service of Process on Liberty
14		Life Assurance Company of Boston

15 10. Pursuant to Local Rule 3.7, the undersigned counsel for Defendant
 16 verifies that, to the best of his knowledge and belief, the documents attached as Exhibit
 17 A to this Notice of Removal are true and complete copies of all pleadings and other
 18 documents filed in the state court proceeding.

19 11. Removal of this matter is timely pursuant to 28 U.S.C. § 1446. This
 20 Notice of Removal has been filed within thirty (30) days of service of process upon the
 21 first served Defendant.

22 12. As evidenced by the Consent attached hereto as Exhibit B, Defendant HD
 23 Supply, Inc. consents to the removal of this action.

24 13. By filing this Notice of Removal, Defendant does not waive its right to
 25 assert any defenses and/or objections to which it is entitled.

26 14. Defendant has on this date given written notice of this filing to all counsel
 27 of record, and has sent written notice of this filing, together with a copy of the Notice of
 28

1 Removal, to the Clerk of the Superior Court, Maricopa County, Arizona pursuant to 28
2 U.S.C. § 1446 and Local Rule 3.7, a copy of which is attached as Exhibit C.

3 WHEREFORE, Defendant respectfully requests that Case No. CV2012-016884
4 be removed from the Superior Court of Maricopa County, Arizona into this Court and
5 that this Court make and enter an order of removal of Case No. CV2012-016884.

6 RESPECTFULLY SUBMITTED this 6th day of March 2013.

7 JACKSON LEWIS LLP

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9 By: /s/Stephen B. Coleman
10 Stephen B. Coleman
11 Attorneys for Defendants

12 **CERTIFICATE OF SERVICE**

13 I certify that a true and correct copy of the foregoing pleading was forwarded
14 via first-class mail on the 6th day of March, 2013 to the following counsel of record:

15 Alan M. Schiffman, Esq.
16 Schiffman Law Office, P.C.
17 4506 North 12th Street
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18 Erin Ronstadt, Esq.
19 Ronstadt Law Group, P.L.L.C.
20 7303 W. Boston Street
Chandler, AZ 85226

21 Attorneys for Plaintiff

22 By: /s/Valerie Armstrong
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